

In the Matter of Merchant Mariner's Document No. Z-841265 and all
other Seaman Documents
Issued to: JOSEPH T. PETERS

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1262

JOSEPH T. PETERS

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.11-1.

By order dated 3 March 1960, an Examiner of the United States Coast Guard at Long Beach, California, revoked Appellant's seaman documents upon finding him guilty of misconduct. The two specifications found proved allege that while serving as a messman on board the United States SS PRESIDENT VAN BUREN under authority of the document above described, on or about 17 February 1960, Appellant wrongfully had possession of a quantity of bulk marijuana and two marijuana cigarettes.

At the hearing, Appellant voluntarily elected to act as his own counsel. The Examiner entered pleas of not guilty to the charge and each specification on behalf of Appellant.

The Investigating Officer introduced in evidence the testimony of six witnesses and several exhibits. Appellants testified in his defense stating that the marijuana was not his and that someone else must have put it in his bunk because Appellant does not know how it got there.

At the end of the hearing, the Examiner rendered the decision in which he concluded that the charge and two specifications had been proved. The Examiner then entered an order revoking all documents issued to Appellant.

FINDINGS OF FACT

On 17 February 1960, Appellant was serving as a messman on board the United States SS PRESIDENT VAN BUREN and acting under authority of his document while the ship was docked at Wilmington, California, after completion of a foreign voyage.

On this date, Customs Officers boarded the ship and conducted a search for contraband. Two of the officers searched the room

which Appellant shared with two other members of the crew. Appellant was present when they found two marijuana cigarettes on the underneath side of the pillow on Appellant's bunk. These cigarettes were wrapped in tissue paper and stowed between the two pillow cases which covered the pillow. A further search disclosed approximately 6 ounces and 35 grains of bulk marijuana beneath the center of Appellant's mattress. This was in a paper bag when it was found between the mattress and the mattress cover. Appellant denied having knowledge concerning any of the marijuana. Each seaman living in this room was responsible for making his own bunk. No other evidence of marijuana was found in Appellant's room or elsewhere on the ship.

The record does not show whether there was criminal prosecution in this case.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is urged that the evidence does not support the findings; the evidence against Appellant is not substantial because it does not establish the charge as against the probability that Appellant was "framed," particularly since there was opportunity for others to "plant" the narcotics under the pillow and mattress.

OPINION

Appellant's contentions are without merit. The Examiner rejected Appellant's denials that he had knowledge concerning the marijuana. Also, the Examiner concluded that the careful manner in which the marijuana was hidden indicated the improbability that someone else place the marijuana in Appellant's bunk in order to "frame" him. The Examiner pointed out that a prima facie case of wrongful possession of marijuana was made out against Appellant by the rebuttable presumption of fact of conscious and knowing possession arising from the proof of physical possession of the marijuana; and access to the location of the narcotic need not be exclusive in order to invoke this presumption. See 46 CFR 137.21-10; Commandant's Appeal Decision No. 1195.

I agree with these propositions and that the most reasonable inference, based on all the evidence, is that Appellant is guilty as alleged in the two specifications.

ORDER

The order of the Examiner dated at Long Beach, California, on 3 March 1960, is AFFIRMED.

A. C. Richmond
Admiral, United States Coast Guard
Commandant

Dated at Washington, D.C., this 11th day of October, 1961.